

Mar 01, 2019

Office of Appeal Hearings
Dept. of Children and Families

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

[REDACTED]

APPEAL NO. 19N-00001

PETITIONER,

Vs.

[REDACTED]

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a hearing in the above-referenced matter was convened on February 7, 2018 at 2:19 p.m. at the [REDACTED] Florida.

APPEARANCES

For the Petitioner: [REDACTED] petitioner's daughter

For the Respondent: [REDACTED], Facility Administrator

ISSUE

At issue is the facility's intent to discharge the petitioner due to non-payment of a bill for services; a Nursing Home Transfer and Discharge Notice was issued on December 13, 2018 with an effective date of January 14, 2019.

The facility has the burden of proof to establish by clear and convincing evidence that the petitioner's discharge is in accordance with the requirements of the Code of Federal Regulations at 42 C.F.R. § 483.15 and Section 400.0255, Florida Statutes.

PRELIMINARY STATEMENT

By a notice dated December 13, 2018, the respondent informed the petitioner's daughter that the facility was seeking to discharge/transfer her mother due to non-payment. On January 7, 2019, the petitioner's daughter timely requested a hearing to challenge the discharge/transfer.

Appearing as a witness for the respondent was [REDACTED], Business Office Manager.

The respondent submitted the notice of discharge as evidence for the hearing, which was marked as Respondent Exhibit 1. The respondent also submitted a current statement and a transaction report. These documents were marked as Respondent's Exhibits 2 & 3 respectively. The petitioner did not submit any documents as evidence for the hearing.

At the time of the hearing, the Agency for Health Care Administration (AHCA) was onsite conducting their annual review. No notice of facility violations was available for review.

FINDINGS OF FACT

1. The petitioner has been residing in the facility since August 9, 2017.
2. The petitioner's daughter had previously agreed to pay the facility what she could from her mother's account while waiting to get guardianship and other legal matters taken care of.
3. The facility's business office manager stated the current balance due is more than \$98,000. The petitioner's daughter has made three payments in the last year, \$10,046.48 on May 16, 2018, \$1,000 in July 2018 and \$700 in September 2018. There

has been no payment since September 2018. The total due at the time of the hearing was \$98,583.34.

4. The daughter did not dispute the total amount, or the payments made.
5. The petitioner is incapacitated and unable to represent herself.
6. The facility administrator filed a “exploitation of the elderly” complaint on the daughter alleging possible misuse of the mother’s monies.
7. The daughter stated that although she has access to her mother’s account, she is not her mother’s legal guardian and therefore she will not pay the facility since they filed a charge against her.
8. The daughter objects to the transfer plan to move her mother to a nursing home in Pensacola. The Pensacola facility is owned by the same company that owns [REDACTED]. She would like for the facility to find a local home to transfer her mother to.
9. The administrator testified that local facilities do not want to take the petitioner once they realize that the reason for the transfer is non-payment of the bill.
10. The daughter asserted that her mother will always owe this facility as they charge over \$7,000 a month and her mother’s income is only \$3,700 a month.

CONCLUSIONS OF LAW

11. The Department of Children and Families, Office of Appeal Hearings, has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Section 400.0255(15), Florida Statutes. In accordance with said authority, this order is the final administrative decision of the Department of Children and Families.

12. Federal Regulations, appearing at 42 C.F.R. § 483.15, set forth the reasons a facility may involuntarily discharge a resident as follows: Admission, transfer and discharge rights.

(c) Transfer and discharge—(1) Facility requirements—(i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

...

(E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;

13. Based on the evidence presented, the nursing facility has established that the petitioner has failed, after reasonable and appropriate notice, to pay for a stay at the facility. This is one of the six reasons provided in 42 C.F.R. § 483.15 for which a nursing facility may involuntarily discharge a resident.

14. Establishing that the reason for a discharge is lawful is just one step in the discharge process. The nursing home must also provide discharge planning, which includes identifying an appropriate transfer or discharge location and sufficiently preparing the affected resident for a safe and orderly transfer or discharge from the facility. The hearing officer in this case cannot and has not considered either of these issues. The hearing officer has considered only whether the discharge is for a lawful reason.

15. Any discharge by the nursing facility must comply with all applicable federal regulations, Florida Statutes, and Agency for Health Care Administration requirements. Should the resident have concerns about the appropriateness of the discharge location or the discharge planning process, the resident may contact the Agency for Health Care Administration's health care facility complaint line at (888) 419-3456.

DECISION

This appeal is denied, as the facility's action to discharge the petitioner is in accordance with Federal Regulations. The respondent may proceed with the discharge, as described in the Conclusions of Law and in accordance with applicable Agency for Health Care Administration requirements.

NOTICE OF RIGHT TO APPEAL

The decision of the hearing officer is final. Any aggrieved party may appeal the decision to the district court of appeals in the appellate district where the facility is located. Review procedures shall be in accordance with the Florida Rules of Appellate Procedure. To begin the judicial review, the party must file one copy of a "Notice of Appeal" with the Office of Appeal Hearings, Bldg. 5, Rm.255, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The party must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The department has no funds to assist in this review, and any financial obligations incurred will be the party's responsibility.

FINAL ORDER (Cont.)

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DONE and ORDERED this 01 day of March, 2019,
in Tallahassee, Florida.

[REDACTED]

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Copies Furnished To: [REDACTED], Petitioner
[REDACTED]

Agency for Health Care Administration
[REDACTED]